IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 31506 of 2001(A)

PETITIONER:

ANITHA ABRAHAM,
LECTURER IN DEPARTMENT OF PHYSICS,
SREEE SANKARA COLLEGE, KALADY,
ERNAKULAM DIST.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY SECRETARY**
   TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

2. **MAHATMA GANDHI UNIVERSITY,**
   REP. BY ITS REGISTRAR, KOTTAYAM.

3. **MANAGING DIRECTOR,**
   SREE SANKARA COLLEGE, KALADY.

4. **PRINCIPAL, SREE SANKARA COLLEGE,**
   KALADY.

5. **THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,**
   ERNAKULAM.

BY ADV. SMT.LATHA KRISHNAN R3 & R4
GOVERNMENT PLEADER SMT. SMITHA SUKUMAR
ADV. SRI. V.K. MOHAMMED YOUSEF

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 51406/2001 IN OP NO. 31506/2001 A.

DISMISSED

10/07/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE APPOINTMENT ORDER DT. 3/6/1996 APPOINTING THE PETITIONER AS LECTURER IN PHYSICS ON PROBATION IN SREE SANKARA COLLEGE.

EXT.P2. COPY OF THE APPROVAL ORDER NO. A3. 12213/97/P DT. 19/3/98 OF THE R5.

EXT.P3. COPY OF THE REPRESENTATION DT. 30/10/00 BEFORE THE MINISTER FOR EDUCATION, KERALA.

EXT.P4. COPY OF THE LETTER NO. AC. B11/3/469/2000/MIX DT. 19/12/00 OF THE ASSISTANT REGISTRAR (ACAD II), ADDRESSED TO THE R3.

EXT.P5. COPY OF THE LETTER NO. 32066/B1/2000/H.EDN DT. 26/5/2001 OF THE DEPUTY SECRETARY TO THE PETITIONER.

EXT.P6. COPY OF THE ORDER GO MS NO. 145/2000/H.EDN DT. 5/10/200 OF THE R5.

EXT.P7. COPY OF THE ORDER BY THE UGC NO. F1. 11/87(CPP) DT. 21/6/95.

EXT.P8. COPY OF THE CIRCULAR BY THE MAHATMA GANDHI UNIVERSITY NO. AC. B.11-1/UGC-GEN/92 VOL. I DT. 7/7/95.

EXT.P9. COPY OF THE M.PHIL CERTIFICATE AWARDED BY THE AGRA UNIVERSITY TO THE PETITIONER.

EXT.P10. COPY OF THE JUDGMENT IN WA NO. 2780/99 DT. 18/11/00.

EXT.P11. COPY OF THE JUDGMENT IN OP NO. 35742/2002 DT. 9/7/2003.

EXT.P12. COPY OF THE JUDGMENT IN WPC NO. 18464/2003 DT. 4/2/2004.

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EXT.P13. COPY OF THE ORDER GO MS NO. 114/2002/H.EDN DT. 5/09/02.

EXT.P14. COPY OF THE JUDGMENT IN OP NO. 33707/2001.

EXT.P15. COPY OF THE PROCEEDINGS OF THE VICE CHANCELLOR OF THE M.G. UNIVERSITY DT. 09/01/2004.

RESPONDENT'S EXHIBITS

EXT.R5A. COPY OF THE DELCARATION OF THE PETITIONER.

EXT.R5B. COPY OF THE EXTRACT OF S.B OF PETITIONER.

True copy

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Thottathil B. Radhakrishnan, J.

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O.P.No.31506 of 2001

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Dated this the 10th day of July, 2007.

JUDGMENT

By the impugned Ext.P5, it was held on behalf of the Government that all junior lecturers appointed as per G.O.(MS)No.176/2000/H.Edn dated 17-11-2000 are bound to accept their deputation to whichever schools which they are deputed and the argument of the petitioner that she was appointed against the substantive vacancy has no relevance to decide whether she should continue in a college or in a higher secondary school. The fact that she was appointed against the substantive vacancy is not in dispute. It cannot also be in dispute because Ext.P1 appointment order issued by the College under the authority of relevant University laws was one by which the petitioner was appointed as lecturer against the retirement vacancy of Sri.V.H.Narayana Swamy, the Principal of the institution. So much so, the mere exercise of the Deputy Director in Ext.P2 characterising the petitioner as a junior lecturer in

the pre-degree section, that too, only for the purpose of paying her the emoluments, would have no bearing on the ultimate decision as to whether the petitioner was entitled to be treated as a lecturer in the Department of Physics in the fourth respondent college on 3-6-1996. As noticed by a Division Bench of this Court in Ext.P10, there was no total ban of appointment in terms of Section 5 of the Pre-degree Course (Abolition) Act, 1997. Even, going by the views of the empowered committee, as noticed in Ext.P10 judgment, appointments could have been made to vacancies that arose prior to 3-6-1997. Petitioner was appointed on 3-6-1996 as against a substantive vacancy that fell vacant on account of superannuation. Therefore, it is impossible for the management or the University to take the stand that the petitioner was not appointed against the substantive vacancy.

2. The question as to approving an appointment is a matter with the University. Once the appointment is approved by the University, the Governmental

authorities are bound to follow such approval for the purpose of releasing salary etc. in terms of the Direct Payment Scheme. It is for the University to fix the staff strength to ascertain whether the appointment of the petitioner on 3-6-1996 has to be approved.

3. For the aforesaid reasons, the impugned Ext.P5 has to go paving way for the University to decide on the question of approval of appointment of the petitioner as per Ext.P1. It is to be clarified that the characterisation of the appointment of the petitioner as that of a junior lecturer in the pre-degree section, as stated in Ext.P2, will not bind the University in taking a decision in accordance with law.

4. In the result, the impugned Ext.P5 is quashed and the second respondent is directed to take up Ext.P1 for consideration for approval in accordance with the University laws and having regard to what is stated herein above. Let the needful be done within a period of three months from the date of receipt of a copy of

this judgment. The University shall not render any decision adverse to the interest of the petitioner without extending to her an opportunity of pre-decisional hearing. On the basis of the aforesaid decisions, the question of re-deployment of the petitioner from higher secondary school, where she now works, will be taken up for decision by the competent among the respondents. Needless to say, the management will also be heard.

Writ petition is allowed as above. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.31506 of 2001

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JUDGMENT

Dated:10-7-2007